Office-Supreme Court, U. S.
FILED
JUN 29 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1951.

No. 25

IDONAH SLADE PERKINS,
Petitioner,

vs.

BENGUET CONSOLIDATED MINING COMPANY,
Respondent.

Brief for Respondent in Opposition to Petition for Writ of Certiorari

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Made and Filed by Law Reporter Ptg. Co., 518 5th St., Wash., D. C.

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IN THE

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October Term, 1951.

No. 85

IDONAH SLADE PERKINS,
Petitioner,

vs.

BENGUET CONSOLIDATED MINING COMPANY,
Respondent.

Brief for Respondent in Opposition to Petition for Writ of Certiorari.

JURISDICTION

Petitioner invokes jurisdiction of this Court under the provisions of Section 1251(3) of Title 28 of the United States Code. Said Section is not applicable in a case of this sort.

INTRODUCTION

Whatever else may be said of the instant petition for the issuance of the Writ of Certiorari, it certainly could not be called accurate in many of its representations. For instance, it is not a fact, as stated in the petition (page 3, 2nd par.), that the decision of the Supreme Court of Ohio which Petitioner seeks to have reviewed is directly contrary to the decision of the Circuit Court of Appeals for the Sixth Circuit in the case of *Maichek* v. *Bertha Consumers*, 25 Fed. (2d) 257, and directly in conflict with the decision of the

Circuit Court of Appeals for the Second Circuit in the case of *Bomze* v. *Nardis Sportswear*, 165 Fed. (2d) 33. An analysis of these cases will appear below.

Nor is it a fact, as stated in the petition (page 2, middle of last paragraph), that Respondent did not at any time claim in the Courts below that the service of process violated the terms of the 14th Amendment of the Constitution —the truth is that Respondent at all times insisted that the question as to whether or not a valid service of process had been made was, after all, a Federal question involving as it did the due process clause of the 14th Amendment of the Constitution.

In its Brief before the Common Pleas Court of Ohio, Respondent said —

> "Allowing a service of process to stand otherwise would violate the due process clause of the Constitution of the United States."

In its Brief before the Appellate Court, Respondent said —

> "We should like to add this thought—all of the Courts have held that the due process clause of the Constitution of the United States is involved in all these cases of service of process on a foreign corporation; that the matter is not one for local law or local interpretation; but is one for the Federal courts with the Supreme Court as the final arbiter."

In its Brief before the Supreme Court of Ohio, Respondent quoted from the decision of this Court in the *Riverside Mills* v. *Menefee case*, 237 U. S, 189, a whole paragraph devoted to the proposition as set forth in the decision in said *Riverside Mills* case, that —

> "one state may not, *without violating the due process clause of the 14th Amendment*, render a judgment against a corporation organized under the laws of another state where such corporation has not come into

> such state for the purpose of doing business therein * * *; and that the mere fact that an officer of a corporation may temporarily be in the state or even permanently reside therein, if not there for the purpose of transacting business for the corporation, or vested with authority by the corporation to transact business in such state, affords no basis for acquiring jurisdiction or *escaping the denial of due process under the 14th Amendment which would result from decreeing against the corporation upon a service had upon such an officer under such circumstances.*"

In *Petitioner's Brief* before the Ohio Appellate Court, she answered the argument of Respondent by saying —

> "Now, precisely what is meant by the phrase 'doing business'? Exactly what activities fulfill the *requirements of this admittedly essential test and, at the same time, due process?* * * * Plaintiff * * * does maintain that the logical conclusion to be drawn from all the authorities cited is that the requirements of Code Section 11290 and the *due process clause* are satisfied if," etc., etc.

Again, Petitioner keeps referring to the fact that Respondent was "present" in Ohio and that it was "doing business" in Ohio, and ends up by saying that there was ample evidence to justify an assumption by the Ohio Supreme Court that Respondent was "present" and was "doing business" in Ohio.

The Courts below certainly did not agree with this contention, because the Common Pleas Court of Ohio found specifically *not only that Respondent was not doing business in Ohio, but that actually, Respondent had no business to be done in the State of Ohio* (R. p. 14, par. nos. 2 and 3; p. 31, par. nos. 2 and 3), and the Court of Appeals, in its opinion and judgments, affirmed the lower Court in every respect on these findings. (R. p. 263, 265.)

Again, Petitioner repeatedly refers to the fact that service was had on John W. Haussermann, Respondent's Presi-

dent and General Manager, from which Petitioner would want this Court to infer that he was Respondent's "managing agent" on whom service could be made under Section 11,290 of the Ohio General Code. The fact is that the lower Court specifically found, and was affirmed by the Appellate Court in this finding, that Respondent *"had no business within Ohio requiring an agent in Ohio to manage and conduct the same"* (R. pp. 14 and 31, par. no. 3); and that "John W. Haussermann, upon whom summons was attempted to be served, *was not the managing agent of the defendant,* Benguet Consolidated Mining Company, *within the meaning of the Ohio statute governing service of process on foreign corporations.*" (R. pp. 14 and 31, par. no. 2.)

STATEMENT OF THE CASE

Petitioner, a resident of Norwalk, Connecticut, in April of 1947 filed two suits against Respondent (a Philippine company organized there in 1903), in the Clermont County, Ohio, Common Pleas Court on causes of action which, if they exist at all, arose in the Philippines. One suit was for cash dividends declared in 1940 and 1941 on shares of stock in the Respondent Company which Petitioner claims she purchased out of her own funds brought to the marriage, and the other was for $2,500,000 in damages for Respondent's failure to deliver to Petitioner certificates representing the stock dividends of 1934 and 1939 on the aforesaid stock.

Petitioner was a resident of the Philippines from November 1913 to and including part of 1934. She was married in the Philippines in January, 1914, and lived there with her husband until they separated in 1930. They are still married. While they were there living together as husband and wife, stock was acquired in the Respondent Company.

The Philippines have a community property system of law much like that of our own community property States, under which property acquired by husbands and wives dur-

ing marriage is community property; and under the Philippine system, the husband is entitled to the possession and control of the community property in the position of administrator thereof so long as the marriage exists and the property has not been separated by judicial decree, and is also entitled to receive all the income and other accruals thereof and thereto in such position as administrator.

Petitioner returned to the Philippines in 1940 for the trial of a case there pending between herself, her husband and Respondent, in which case the issue was as to whether Petitioner owned the stock and the dividends thereon by reason of her having purchased the same out of her own funds, or whether the stock was purchased out of the husband's earnings after marriage and was thus community property over which the husband was entitled to possession and control in his position as administrator thereof and entitled to receive the dividends thereon in such position.

In this case, Petitioner made the same claims for damages and dividends against Respondent which she makes in the two suits she filed in April of 1947 as above noted, excepting that the amount of damages sought was smaller and the dividends claimed were for different years.

In her Statement of the Case, Petitioner does not inform this Court of this Philippine Suit, nor does she inform the Court that the Philippine suit was decided against her in 1947, the Court's holding being that the stock *had not been purchased out of her funds*, but had been purchased out of the husband's earnings after marriage, and was thus community property, the dividends on which were payable to him in his position as administrator thereof. The Court also dismissed the claims for dividends and damages she made against Respondent. This Philippine decision was rendered *after* the decisions in the cases of *Perkins* v. *Guaranty Trust Co.*, 274 N. Y. 250, 8 N. E. (2d) 849 and *Perkins* v. *Benguet Consolidated Mining Co.*, 55 Cal. App.

(2d) 720, 132 Pac. (2d) 70, cited by Petitioner on page 5 of her petition.

Nor does Petitioner advise this Court that the New York judgment in the *Perkins* v. *Guaranty Trust Co.* case, *supra*, on which the California decision, *supra*, was based was made possible *because her husband allowed her to testify, completely uncontradicted*, in the New York litigation of 1933-1937, that the shares of stock in the Respondent Company which forms the basis of the alleged causes of action, had been purchased out of her own separate funds; and that the Philippine decision of 1947 was rendered on the *completely uncontradicted testimony of the husband* that *he* and not *she* had bought all of the shares out of his earnings during the marriage; which testimony she probably could not have contradicted because the husband bolstered the same with checks, check stubs, bank records, broker's records, bookkeeping entries, etc., showing he had purchased the stock out of his earnings after marriage.

Nor does Petitioner tell this Court in her Statement of the Case that by virtue of these two conflicting decisions, made possible by the diametrically opposed testimony of herself and her husband on the same issue, she has collected all of the cash dividends from 1930 through March, 1940; that her husband collected the same cash dividends from 1930 to June, 1937, and has a judgment against Respondent rendered by the Philippine decision of 1947 for the balance of them. *Thus, each has received Court awards for dividends on the same shares* which should have been paid but once, to the loss of Respondent of over $500,000.00 in cash to this date for duplicate dividends on the same shares. Respondent has appealed to the Supreme Court of the Philippines this Philippine decision of 1947.

This Philippine suit decided in 1947 relitigated anew what Petitioner and her husband had theretofore litigated in New York—the only difference being that Respondent was not a party to the New York litigation, but was a party by

way of interpleader in the Philippine litigation decided in 1947.

Petitioner's Statement of the Case also would infer that Respondent had business to be done after Pearl Harbor. Respondent, as Petitioner states, is a Philippine Company engaged in the business of mining gold, all of which is done on its mining properties in the Philippines. Respondent has never conducted operations of any kind outside of the Philippines. The Japanese took control of the mines in December of 1941 and were not driven out until about December of 1945. In driving them out, our United States forces completely demolished Respondent's surface buildings at the mines, and for lack of attention, the mine tunnels were in a state of callapse at the end of 1945.

In 1947, when the Ohio suits were filed, Respondent had not yet resumed its mining operations; Respondent being then engaged in reconstructing its buildings and clearing up its mine tunnels. Respondent's only connection with the United States at the time and before the suits were filed came from the fact that the United States was the only country where, at the war's end, most of the materials, supplies and equipment necessary to rebuild its plant and mines could be purchased. All of such purchases were made by Respondent's Purchasing Agent in San Francisco. None of the purchases were made in Ohio, or from any business organization in Ohio, or by John W. Haussermann, Respondent's President and General Manager, because he knew nothing about such matters. He did, however, sign some orders for machinery, supplies and equipment whenever a supplier demanded that Respondent's Purchasing Agent supply an order signed by an official of Respondent, because he was the only official of Respondent in the United States who could sign them; and he did sign the checks on the Ohio bank accounts to pay for the purchases. The signing of orders and checks was done sometimes in Ohio, sometimes in New York, Washington, Chicago, California or else-

where, depending on where John W. Haussermann happened to be. He was in Ohio less than 50% of his time; he travelled around extensively, but not on Respondent's matters.

John W. Haussermann, Respondent's President and General Manager, was in the United States at the time suits were filed, and had been in the United States since 1941, simply because he could not get back to the Philippines. John W. Haussermann had lived continuously in the Philippines since 1898 save for a few vacations spent in the United States. In 1906 he bought the farm in Clermont County, Ohio, on which he was born, in order to help settle his father's estate; and whenever he came to the United States on vacation or on family matters—Respondent had no business in the United States needing to be attended to—he would make this farm his headquarters.

In late Spring of 1941, Respondent came to the United States on family and personal matters, with reservations to return to the Philippines in September, 1941. The United States Government took over the ship on which he was to sail and cancelled his reservations. His subsequent October and November reservations were similarly cancelled, and his reservations in late December, 1941, were cancelled by reason of Pearl Harbor.

As stated above, the Japanese were driven out of the mines of Respondent in late 1945; and immediately thereafter, John W. Haussermann began his endeavors to procure suitable reservations to return to the Philippines. These endeavors were pursued to the end that he finally procured reservations in January, 1947, for a sailing in August of 1947. The suits were filed in April.

Such were the facts before the Ohio Common Pleas Court, the Ohio Court of Appeals and the Ohio Supreme Court. The two lower Courts found, as stated above, that *not only* was Respondent *not doing business in Ohio, but* that *it had no business to be done in Ohio,* and thus that John W. Haus-

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sermann, even though Respondent's President and General Manager, could not be deemed to be a "managing agent" under the Ohio statute pertaining to the service of process against foreign corporations.

REASONS FOR DENYING THE WRIT

In her attempt to secure the issuance of the writ, Petitioner suggests that the decision of the Ohio Supreme Court as to which the review is sought is not only directly contrary to and directly in conflict with the decisions of the Federal Circuit Courts of Appeal, but further suggests that the Ohio Supreme Court has decided a Federal question of substance not theretofore determined by this Court, and that it has decided such question in a way probably not in accord with the applicable decisions of this Court.

These suggestions of the Petitioner do not square away with the actualities because the fact is that not only is the Ohio Supreme Court decision in accord with the decisions of this Court, but it is also in accord with several decisions of the Federal Circuit Courts of Appeal, and not in conflict with any such decisions.

(a) The Ohio Supreme Court Decision is in Accord with the Decisions of This Court.

A reading of the decisions of this Court cited by the Ohio Supreme Court will show without question that the decision of the Ohio Supreme Court is in accord with such decisions.

For instance, in the case of *Robert Mitchell Furniture Co.* v. *Selden Brick Construction Company*, 257 U. S. 213, 215, 216, an Ohio corporation had sued a Missouri corporation in the United States District Court for the Southern District of Ohio on a contract to be performed in the State of Michigan. The defendant corporation had appointed one Nash as its statutory agent in Ohio upon whom service of process could be made. The lower Court held that the serv-

ice upon Nash was bad. In passing on the question, the Supreme Court of the United States said:

> "The purpose in requiring the appointment of such an agent is primarily to secure local jurisdiction in respect of business transacted within the state. • • • But the reasons for a limited interpretation of a compulsory assent are hardly less strong when the assent is expressed by the appointment of an agent than when it is implied from going into business in the state without appointing one. *In the latter case, the implication is limited to business transacted within the state. Simon* v. *Southern R. Co.*, 236 U. S. 115, 131, 132, 59 L. ed. 492, 500, 501, 35 S. Ct. Rep. 255; *Old Wayne Mutual Life Assoc.* v. *McDonough*, 204 U. S. 8, 22, 23, 51 L. ed. 345, 351, 27 Sup. Ct. Rep. 236. *Unless the state law, either expressly or by local construction,* gives to the appointment a larger scope, *we should not construe it to extend to suits in respect of business transacted by the foreign corporation elsewhere,* at least, if begun, as this was, when the long previous appointment of the agent is the only ground for imputing to the defendant an even technical presence. *Chipman* v. *Thomas B. Jeffery Co., supra. The indications of the Ohio statutes, so far as they go, look to 'liability incurred within this state'.* Gen. Code, §181. *As we know of no decision to the contrary by the supreme court of Ohio, we are of the opinion that the service upon Nash was bad.*"

A notable thing about the decision of the Supreme Court of the United States in this case is the statement that the indications of the Ohio statutes look to "liability incurred within the state".

In the case of *International Shoe Company* v. *Washington*, 326 U. S. 310, 319 and 320, the Supreme Court of the United States held as follows:

> "But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to

> obligations, and, *so far as those obligations arise out of or are connected with the activities within the state,* a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." (Citing cases.)

The clear inference from the above holding is that if the obligations on which the suit is brought do not arise out of, and are not connected with, the activities of the foreign corporation within the State a procedure which requires the foreign corporation to respond to a suit brought to enforce them would in most instances be undue; and this is the only way of interpreting the rationale of the decision as it appears beginning on Page 317 of the opinion.

The other decisions of this Court cited by the Ohio Supreme Court are to the same effect.

(b) The Federal Question Decided by the Ohio Supreme Court Has Heretofore Been Passed on by This Court.

Petitioner contends that the point of law decided by the Ohio Supreme Court has never been passed on by this Court. The above cases should, of course, set this contention at rest, but we should nevertheless like to point to other decisions of this Court which have passed on the point.

For instance, in the case of *Missouri Pacific RR. Co.* v. *Clarendon Boat Ore Co.*, 257 U. S. 533, this Court said:

> "Still less is it encumbent upon a State in furnishing such process (against a foreign corporation) to make the jurisdiction over the foreign corporation wide enough to include the adjudication of transitory acts not arising within the State. Indeed, so clear is this that in dealing with the statutes providing for service upon foreign corporations doing business in the State upon agents whose designation as such is especially required, *this Court has indicated a leaning toward a construction, where possible, that would exclude from their operation causes of action not arising in the business done by them in the State.*"

Another instance is the decision of this Court in the case of *L. & N. Rwy. Co.* v. *Chatters*, 279 U. S. 320, 324, 328, 73 L. Ed. 711, 716, 718, where this Court said:

> "A foreign corporation is amenable to suit to enforce a personal liability if it is doing business within the jurisdiction in such a manner and to such an extent as to warrant the inference that it is present there. (Citing cases) Even when present and amenable to suit *it may not*, unless it has consented (citing cases), *be sued on transitory causes of action arising elsewhere which are unconnected with any corporate action by it within the jurisdiction* (citing cases).
>
> "* * * We address ourselves to the question, decisive of this branch of the case, whether the *Southern*, being present within the State of Louisiana, is amenable to suit, on this cause of action as one arising out of business done within the State, or from such action of the corporation within the State as to subject it to liability there. * * *"

The Southern Railroad claimed that the cause of action did not arise out of anything it had done in Louisiana, but this Court found that, while the cause of action arose outside of the State of Louisiana where suit was brought, nevertheless, the injuries arose on a trip which plaintiff took on a railroad ticket purchased in Louisiana where the Railroad maintained an office to sell tickets for travel on its trains, and thus that the action arose out of business transacted within Louisiana. The Court then said:

> "It was out of this action within the State that the present obligation of Southern arose, although the alleged breach of it occurred elsewhere * * *.
>
> "Where jurisdiction has been denied, the cause of action not only arose outside the State, but it was not shown to have arisen out of any business conducted by the corporation within it or to have had any relation to any corporate act there (citing cases). *In such a case, whether the jurisdiction invoked be deemed to depend upon the presence of the corporation within the State through the doing of business there, or on its consent*

by the designation of an agent, the implication is that the liability to suit does not extend to causes of action which have nothing to do with any act of the corporation within the State. (Citing case) But where the cause of action does arise out of a corporate act within the jurisdiction, the presumption would seem necessarily to be the other way."

Other pronouncements of this Court to the same effect could be cited, but they would be merely cumulative.

We shall now proceed to the consideration of the other points.

(c) The Ohio Supreme Court decision Is Not in Conflict with the Federal Circuit Court Decisions Which Petitioner Cites.

Petitioner states that the Ohio Supreme Court decision is contrary to, and in direct conflict with, the decisions of the Sixth and Second Circuits in the case of *Maichek* v. *Bertha Consumers Co.*, 25 Fed. (2d) 257 (6th Cir.); and *Bomze* v. *Nardis Sportswear Company*, 165 Fed. (2d) 33 (2nd Cir.). It is very difficult to understand how such statement can be made if it be assumed that the decisions were read by counsel for the Petitioner.

In the *Maichek* case, *supra*, the Circuit Court of Appeals sought to ascertain and apply the Ohio law, admitting in doing so that there was some doubt as to the correctness of the conclusion which it reached. The Court said:

"Section 11276 of the Ohio General Code provides that any action, not local, may be brought against a foreign corporation in any county where it may be found, and section 11290 directs that process issued against a foreign corporation doing business in the state and having a managing agent therein may be served upon that agent. Construing that statute and the applicable general law, it must be taken as the settled rule in Ohio that a foreign corporation, actually doing business within the state and having therein a

managing agent who is served, is subject to be sued therein upon a transitory cause of action arising outside of the state. *Handy* v. *Ins. Co.*, 37 Ohio St. 366, 370; *Loftus* v. *Pennsylvania R. Co.*, 107 Ohio St. 352, 140 N.E. 94. *It is suggested rather than distinctly claimed, that the state cannot rightly subject a foreign corporation to this burden* (see *Robert Mitchell Co.* v. *Selden Co.*, 257 U. S. 213, 216, 42 S. Ct. 84, 67 L.Ed. 201); but there has been no such distinct holding by the Supreme Court and we think we should accept the Ohio rule as affecting foreign corporations which locate themselves in the state for business purposes.

"Sections 179 and 181 of the Ohio General Code provide that, in order to entitle them to do business lawfully in Ohio, foreign corporations must comply with certain conditions which include the appointment of an agent upon whom process may be served, and who is commonly called the statutory agent. *Where personal jurisdiction over the corporation depends upon service on such statutory agent, there are no Ohio decisions as to whether suit will lie in the Ohio courts on a transitory action arising outside the state. It is argued that the decisions of the Supreme Court of the United States, properly compared and interpreted, forbid such action.* *Missouri Pac. R. Co.* v. *Clarendon Co.*, 257 U.S. 533, 42 S. Ct. 210, 66 L.Ed. 354, and cases cited. *It may be that the Ohio decisions arising under the managing agent statute would apply also in the other class of cases, because it is claimed that there is no distinction on principle between them. These things we think it unnecessary to decide.*"

From the foregoing, it seems clear that this case cannot in any wise be said to be contrary to the holding of the Ohio Supreme Court in the case sought to be reviewed by the instant application for the Writ of Certiorari. As we said at the beginning, the Circuit Court expressed some doubt as to its holding.

As to the *Bomze* case, *supra*, the Circuit Court said that no Federal question was involved because the cause of action sued on arose in New York out of the very business

done in New York by the foreign corporation. As to this there can be no question for the Circuit Court of Appeals held:

> "In conclusion we hold that the defendant was doing enough business in New York to satisfy the state decisions; and that, since the cause of action arose—at least as to the New York sales—out of those activities which made the corporation 'present' (in New York), any federal question is set at rest." (Parenthetical expression supplied.)

The Circuit Court of Appeals, in reaching its conclusion as above noted, had this to say, from which it is hard to conceive how Petitioner could suggest that decision as being in direct conflict with the decision of the Ohio Supreme Court in question:

> "However, we understand that since Tauza v. Susquehanna Coal Co., supra, the law of New York has been that a foreign corporation is either 'present', or it is not; and once it is found to be 'present', it becomes subject to process, regardless of whether the particular liability in suit has arisen out of the activities which collectively constitute the 'presence'. How far this has been a reflection of what the New York Courts suppose to be the constitutional limit of their powers is not clear. In Lillibridge, Inc. v. Johnson Bronze Co., supra, Finch, J., declared that the state courts should take the federal decisions as their absolute standard, positive as well as negative; but, when the Court of Appeals affirmed the decision, it wrote no opinion.
>
> "If the state courts do take the Supreme Court decisions in both senses: that is, if they regard the inquiry, how far they may go, as coalesced with the inquiry, how far they will go, International Shoe Co. v. Washington, has effected a change. The Supreme Court there declared that the corporation's 'presence' was to be determined by balancing the opposed interests; the convenience of the obligee against the burden upon the corporation. That is a test not different in kind from that which has been repeatedly used, when the inquiry

is whether it will 'unduly burden' interstate commerce to fetch a corporation, engaged in such commerce, from the place of its principal activities to defend the action. *If that be the test, the question at once becomes relevant whether the action is based upon a liability arising out of the local activities;* for it is almost always less burdensome to subject a corporation to the defense of actions so arising than to those arising elsewhere. Indeed, probably some such notion is at the basis of those decisions which permit a state to subject to process in personam transients who, while within its borders, have incurred a liability under its laws."

(d) The Ohio Supreme Court Decision Is in Accord with the Decisions of the Federal Circuit Courts of Appeal.

Not only is the decision of the Ohio Supreme Court not in conflict with the two decisions of the Federal Circuit Courts of Appeal cited by the Petitioner, but we state that the Ohio Supreme Court decision is in accord with the decisions of the Federal Circuit Courts of Appeal which have passed on the subject. We shall cite but two of such decisions.

As an instance, we should like to cite the case of *American Indemnity Co.* v. *Detroit Fidelity and Surety Co.*, 63 Fed. (2d) 395 (5th Cir.) where the Court said that the upholding of the service of process in a suit against a foreign corporation "should be confined to suits arising from business done" in the State where the suit was brought, and cited Supreme Court cases on the subject.

As another instance, there is the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Rausch* v. *Commercial Travellers Mutual Accident Association of America*, 38 Fed. (2d) 766, (cert. den. 281 U.S. 763, 74 L.Ed. 1171), in which the Court held that service of process in the State of Missouri upon the agent of the insurance company in Missouri on a suit based on a policy contracted for and issued in the State of New York was bad under both the State and the Federal laws.

(e) The Ohio Supreme Court Decision Does Not in Any Wise Violate Section 2 of Article IV of the Constitution of the United States because It Applies to Suits Against Foreign Corporations, Equally Whether the Same Are Filed by a Citizen or a Non-Citizen of Ohio.

In her Second Specification of Errors, Petitioner suggests that the holding of the Supreme Court violates the provisions of Article II, Section 4, of the Constitution. Evidently, this is an error on her part, for what is stated in the Petition refers to Article IV, Section 2, of the Constitution which provides:

> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

The contentions of Petitioner as to the applicability of this Constitutional provision would seem to be without merit because the decision of the Ohio Supreme Court applies with equal force to a citizen of Ohio as well as to a non-citizen of Ohio. There is no reference whatsoever in the decision of the Supreme Court of Ohio which limits its applicability to a suit filed by a person who is not a citizen of Ohio. The crux of the decision of the Supreme Court of Ohio is that, the suit being against a foreign corporation, it cannot be maintained unless the cause of action grew out of something done by the foreign corporation within the State of Ohio.

CONCLUSION

In conclusion, we should like to state that this Court and the Federal Courts have always held that it is for the State to determine how far it will go in entertaining suits against foreign corporations. This is specifically recognized in, among others, the two cases cited in this Brief—*Robert Mitchell Furniture Co.* v. *Selden Brick Construction Co., supra,* and *Maichek* v. *Bertha Consumers, supra.* In the

last named case, the Circuit Court of Appeals suggested that there were no Ohio decisions as to whether suit would lie in the Ohio Courts on a transitory cause of action arising outside the State where personal jurisdiction over the corporation depended upon the service on a statutory agent, and in the first mentioned case, this Court said that the indications of the Ohio statutes, so far as they go, look to liability incurred within the State of Ohio, and further suggested that unless the State law, either as written or as construed by the Ohio Courts, were otherwise, this Court would not uphold the validity of the service of process against a foreign corporation on a transitory cause of action.

The Supreme Court of Ohio has now interpreted the Ohio statute with reference to service of process against foreign corporations and limited the validity of such service to situations where the cause of action arose out of something done by the foreign corporation within the State of Ohio. This, we say, now becomes the law of Ohio, which must be followed by the Federal Courts inasmuch as it does not transcend against anything prohibited by the due process clause of the Constitution of the United States.

For the reasons stated above, and in the foregoing parts of this Brief, we suggest that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

LUCIEN H. MERCER,
CHARLES G. WHITE,
Attorneys for Respondent.